

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

REGINALD BELL, SR.,

Plaintiff,

v.

CITY OF TUKWILA, et al.,

Defendants.

No. C10-379Z

ORDER

THIS MATTER comes before the Court on the Report and Recommendation (“R&R”) of United States Magistrate Judge Brian A. Tsuchida, docket no. 61. The R&R recommends denying defendants’ motion for summary judgment, docket no. 33, as to plaintiff’s state law claim for assault and battery.<sup>1</sup> Having reviewed the R&R and defendants’ objections, docket no. 62, to which plaintiff filed no response, the Court enters the following order.

**Background**

In seeking summary judgment as to plaintiff’s state tort claim, defendants rely on RCW 4.96.020, which requires that any claim for damages against a local governmental

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<sup>1</sup> With regard to plaintiff’s claim under 42 U.S.C. § 1983, defendants’ motion for summary judgment was previously denied in part and deferred in part. Order (docket no. 47). The deferred portion of the motion, which was brought by the City of Tukwila pursuant to *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658 (1978), remains pending.

entity<sup>2</sup> be presented, at least 60 days prior to suit and within the applicable period of limitations for such claim, to the agent appointed to receive such claim. Tukwila has appointed the City Clerk as its agent for receiving claims made under RCW Chapter 4.96. Tukwila Municipal Code § 2.20.025. On June 2, 2008, plaintiff sent correspondence to the City of Tukwila's "Risk Management Division," Exh. 1 to Culumber Decl. (docket no. 53), alleging that Tukwila police officers used excessive force against him on May 7, 2008. The letter was stamped "received" by the City of Tukwila's Mayor's Office on July 10, 2008, and it was forwarded to Washington Cities Insurance Authority ("WCIA"), which ultimately advised plaintiff that his claim was being denied. Exh. 7 to Culumber Decl. The R&R concludes that plaintiff has substantially complied with RCW 4.96.020 and can proceed with his state law assault and battery claim.

## **Discussion**

Defendants have objected to the R&R, making a distinction between the content and the presentment requirements of RCW 4.96.020. As to content, defendants concede that substantial compliance is sufficient, but as to presentment, they contend that strict compliance is necessary. In their objection to the R&R, defendants cite several cases supporting this proposition. *See Atkins v. Bremerton Sch. Dist.*, 393 F. Supp. 2d 1065, 1067 (W.D. Wash. 2005); *see also Medina v. Pub. Utility Dist. No. 1*, 147 Wn.2d 303, 316, 53 P.3d 993 (2002); *Sievers v. City of Mountlake Terrace*, 97 Wn. App. 181, 183, 983 P.2d 1127 (1999); *Pirtle v. Spokane Pub. Sch. Dist. No. 81*, 83 Wn. App. 304, 309, 921 P.2d 1084 (1996); *Kleyer v. Harborview Med. Ctr.*, 76 Wn. App. 542, 546, 887 P.2d 468 (1995). Defendants did not, however, bring these authorities to the attention of Magistrate Judge Tsuchida.

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<sup>2</sup> The claim-filing prerequisite to suit extends to municipal employees acting within the scope of their employment. *Melin-Schilling v. Imm.*, 149 Wn. App. 588, 593, 205 P.3d 905 (2009); *see Atkins v. Bremerton Sch. Dist.*, 393 F. Supp. 2d 1065, 1069 (W.D. Wash. 2005)

Moreover, defendants totally failed to advise the Court that these opinions have been abrogated by legislation enacted in 2009. The relevant statute now provides that “[w]ith respect to the content of claims under this section and all procedural requirements in this section, this section must be liberally construed so that substantial compliance will be deemed satisfactory.” RCW 4.96.020(5) (emphasis added). Legislative history reflects that the following testimony was offered in support of this amendment: “The original intent of the [claim filing] statutes was to provide notice so that the government can get the facts of the claim and investigate. They were not meant to be ‘gotcha’ statutes. Some of the procedural requirements are tricky. Cases are being dismissed based on technical interpretations of the statute. The bill is aimed at restoring the original intent.” H.R. Bill Rep., House Bill 1553, 61st Legislature, 1st Reg. Sess. (Wash. Apr. 16, 2009). Thus, although the case law prior to 2009 differentiated between content and procedure (or presentment), requiring strict compliance as to the latter, the current statute makes no such distinction and prescribes a substantial compliance standard as to both content and procedure.

The question remains whether the pre-2009 strict compliance or the current substantial compliance standard applies in this case. The R&R takes note of the 2009 amendments, but applies the 2006 version of RCW 4.96.020 because plaintiff “submitted his claim to the City of Tukwila in 2008.” R&R at 3 n.1 (docket no. 61). The City of Tukwila alleges, however, that plaintiff did not, in effect, submit a claim because he did not file it with the City Clerk. Thus, the date of the letter that plaintiff sent to the Risk Management Division is not determinative of which version of the statute applies.

In Washington, a statutory enactment is presumed to operate only prospectively unless the legislature indicates an intent to apply it retroactively or the amendment is curative or remedial. *E.g., Densley v. Dep’t of Retirement Sys.*, 162 Wn.2d 210, 223, 173 P.3d 885 (2007); *1000 Va. Ltd. P’ship v. Vertecs Corp.*, 127 Wn. App. 899, 913, 112 P.3d 1276 (2005). RCW 4.96.020 contains no express provision concerning retroactivity, and thus, the

1 2009 amendments must be either curative or remedial to have retroactive effect. An  
2 amendment is curative if it clarifies or technically corrects an ambiguous statute. 127 Wn.  
3 App. at 913. A statute is remedial if “it relates to practice, procedure, or remedies and does  
4 not affect a substantive or vested right.” *Id.*; *see also Dragonslayer, Inc. v. Wash. State*  
5 *Gambling Comm’n*, 139 Wn. App. 433, 449, 161 P.3d 428 (2007).

6 The 2009 amendments to RCW 4.96.020 satisfy both of these tests. Prior to 2009, the  
7 related provision that defines claim filing pursuant to RCW 4.96.020 as a “condition  
8 precedent to the commencement of any action,” indicated that “[t]he laws specifying the  
9 content for such claims shall be liberally construed so that substantial compliance therewith  
10 will be deemed satisfactory.” RCW 4.96.010(1). Based on this language, viewed in light of  
11 the doctrine that the legislature may specify the terms of its waiver of sovereign immunity,  
12 *see Medina*, 147 Wn.2d at 312; *Kleyer*, 76 Wn. App. at 545, courts attributed to the  
13 legislature an intent to require strict compliance as to “the filing procedures themselves.”  
14 *Pirtle*, 83 Wn. App. at 309 (citing *Hall v. Niemer*, 97 Wn.2d 574, 580-81, 649 P.2d 98  
15 (1982), *Kleyer*, 76 Wn. App. at 545, and *Lewis v. City of Mercer Is.*, 63 Wn. App. 29, 32-33,  
16 817 P.2d 408 (1991)). The 2009 amendments are “curative” in that they clarify the original  
17 legislative intent concerning the “substantial compliance” clause of RCW 4.96.010(1). Such  
18 interpretation is consistent with the “generally accepted” purpose of the claim filing statute,  
19 namely “to allow government entities time to investigate, evaluate, and settle claims,”  
20 *Medina*, 147 Wn.2d at 310, and not to be interposed as a hyper-technical obstacle to suit.

21 RCW 4.96.020 is also remedial in nature. The statute sets forth the procedure for  
22 notifying a local governmental entity of a claim for damages and imposes a 60-day waiting  
23 period during which litigation may not be commenced. In addition to expressly rendering  
24 both content and procedural requirements subject to the substantial compliance standard, the  
25 2009 amendments defined with more specificity the necessary components of a claim and  
26 required that local governmental entities make standard claim forms available via the

1 Internet. Because the 2009 amendments relate solely to practice and procedure and do not  
2 affect substantive rights, they have retroactive application. The Court therefore MODIFIES  
3 and ADOPTS the R&R's conclusion that substantial compliance is the appropriate standard,  
4 that plaintiff satisfied such standard,<sup>3</sup> and that defendants' motion for summary judgment as  
5 to plaintiff's state law claim must be denied.

6 Pursuant to 28 U.S.C. § 636(b)(1), this matter is REFERRED to Magistrate Judge  
7 Tsuchida for further proceedings. Magistrate Judge Tsuchida may rule on plaintiff's pending  
8 motions for leave to take depositions by written questions, to compel, for sanctions, and to  
9 appoint counsel, docket nos. 49, 54, 55, & 56, and shall provide a report and  
10 recommendation concerning the City of Tukwila's motion for summary judgment as to  
11 plaintiff's § 1983 claim based on the *Monell* doctrine. Magistrate Judge Tsuchida is also  
12 authorized to issue a scheduling order in this case, after consultation with chambers  
13 concerning an appropriate trial date.

#### 14 **Conclusion**

15 For the foregoing reasons, the R&R, docket no. 61, is MODIFIED and ADOPTED.  
16 The portion of defendants' motion for summary judgment, docket no. 33, that relates to  
17 plaintiff's state law claim for assault and battery and that was previously deferred, is now  
18 DENIED. The portion of defendants' motion for summary judgment, docket no. 33, that  
19 relates to plaintiff's § 1983 claim against the City of Tukwila remains DEFERRED. This  
20 matter is REFERRED to Magistrate Judge Tsuchida for further proceedings.

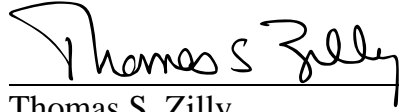
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24 <sup>3</sup> As noted in the R&R, defendants had actual notice of plaintiff's claim long before he initiated this  
25 litigation. Indeed, on behalf of defendants, WCIA acknowledged receipt of plaintiff's claim and advised  
26 plaintiff to direct all further communications to WCIA. Exh. 3 to Culumber Decl. (docket no. 53). WCIA  
then proceeded to investigate the matter and eventually concluded that the Tukwila police officers' actions  
"were appropriate" and that plaintiff's injuries were the result of his "own actions." Exh. 7 to Culumber  
Decl. (docket no. 53). Plaintiff more than substantially complied with the claim-filing statute.

1 IT IS SO ORDERED.

2 The Clerk is directed to send a copy of this Order to all counsel of record, to plaintiff  
3 pro se, and to Magistrate Judge Tsuchida.

4 DATED this 21st day of March, 2011.

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7 Thomas S. Zilly  
8 United States District Judge  
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